

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3604 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

G S R T CORPORATION

Versus

VK THAKARDA

C/O HK RATHOD

Appearance:

MR HARDIK C RAWAL for Petitioner

MR HK RATHOD for Respondent

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 30/09/98

ORAL JUDGEMENT

Heard Mr.Rawal for the petitioner and Mr.Rathod for the Respondent. RULE is made returnable forthwith. Both the learned advocates have made their submissions.

2. The respondent was working as an Artisan 'A' Mechanic in Petlad Depot in the district of Kheda. He remained absent from 25.11.1988 to 18.5.1989. After an enquiry, he was found to be guilty and ordered to be

dismissed. The learned Judge of the Labour Court held that his misconduct was proved, but came to the conclusion that a leniency is required to be shown and under Section 11-A of the Industrial Disputes Act, 1947 directed reinstatement with continuity and 30% of the backwages and stoppage of one increment permanently.

3. Mr.Rawal appearing for the petitioner submits that the past record of the employee is not good. There are in all eleven defaults, out of which two are regarding absence. But then, those are for absence of nine and two days. The fact, however, remains that there are other defaults and, where the misconduct is proved, there is no reason why the employee should be granted backwages. In the circumstances, the award of backwages is interfered and set aside though the other part of the award granting reinstatement with continuity and with stoppage of one increment with permanent effect will remain. Rule is accordingly made absolute.

4. The impugned order is dated 25.2.1997. It was published on 30.5.1997 and became enforceable on 30.6.1997. The petition is filed on 30.4.1998. The respondent workman will be permitted to join duty by 15.10.1998 and the arrears from the date on which the award became enforceable will be paid to him by the end of November 1998. The amount payable to the respondent will be recovered from the salary of the officers concerned inasmuch as it is sheerly because of their negligence that this amount is required to be paid to the respondent workman.

(KMG Thilake)

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